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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,733	03/11/2003	Dimitri Caplygin	4402-003	5008
530	7590	02/15/2006		
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER	
			FOREMAN, JONATHAN M	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/018,733	CAPLYGIN, DIMITRI
	<b>Examiner</b>	<b>Art Unit</b>
	Jonathan ML Foreman	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13,15-18,22,25,26,28-32,35-38,41-47,50,54,57,58 and 60-65 is/are rejected.
- 7) Claim(s) 14,19-21,23,24,27,33,34,39,40,48,49,51-53,55,56 and 59 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/10/02; 5/6/02</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statements filed 4/10/02 and 5/6/02 comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. They have been placed in the application file, and the information referred to therein has been considered by the examiner as to the merits.

### *Specification*

1. The disclosure is objected to because of the following informalities: the brief description of the drawings fails to include a description of Figures 12a – 12 h.

Appropriate correction is required.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: “arrow C” as explained on page 16, line 30. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 11, 12, 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to claims 9, 11, 12 and 18, it is unclear if “said display” is referring to the first visual display means or the second visual display means.

***Note to Applicant Regarding 35 USC § 112 6<sup>th</sup> Paragraph***

In regards to claims 1, 5, 6, 15, 18, 28, 30, 31, 36 and 41 - 43, only those claims using “means for” or “step for” modified by some functional language, as long as it is not modified by sufficient structure, material, or acts for achieving the specified function, will invoke 112.6<sup>th</sup> paragraph. If the applicant chooses to invoke 112.6<sup>th</sup> paragraph without using “means for” or “step for”, applicant may do so by explicitly stating so in the subsequent response to this office action. In the present case “computer processing means”, “feedback means”, “input means”, “means to provide a different display”, “means to receive a spoken input” have not been considered by the Examiner as invoking 112.6<sup>th</sup> paragraph.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 15 – 18, 26, 28 – 32, 35, 42, 43, 47, 50, 58, 60, 61 and 63 – 65 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,737,060 to Kasha, Jr.

In regards to claims 1, 15 – 18, 26, 28 – 32, 35 and 42, Kasha, Jr. discloses an apparatus for the enhancement of neurophysiological processes of a patient by the stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex, the apparatus including first visual display means (10) for viewing by said patient and computer processing means (22) producing an output to said visual display means to cause a display on said visual display means (Col. 4, lines 54 – 56), said display including at least one visual cognitive exertion exercise (Col. 8, lines 53 – 55) and at least one visual stimulation image (18) including one or more therapeutic display elements targeted to stimulate selected ones of said receptive cell fields, said therapeutic display elements including one or more moving contrast edges (Col. 5, lines 18 – 20), wherein said therapeutic display elements are displayed on said visual display means and capable of providing therapeutic stimulation to said receptive cell fields of a patient whilst said patient is performing said cognitive exertion exercise. Kasha, Jr. discloses means to provide a different display to each eye of the patient. Kasha, Jr. discloses the display means being virtual reality goggles (Col. 5, lines 15 – 26). Kasha, Jr. discloses patient input means (26), the output to the display causes a different cognitive exertion exercise to be displayed in response to an input from the patient through the input means (Col. 8, lines 58 – 60). The display includes cortical stimulation elements (18) and non-cortical stimulation elements (16, 34). The apparatus includes means for varying at least two of spatial density, luminance, contrast, color, shape, velocity, orientation, direction of motion and locus of movement of said plurality of therapeutic display elements (Col. 5, line 62 – Col. 6, line 7). The cognitive exertion exercise includes a series of prompts requiring a patient response (Col. 8, lines 48 – 55). The therapeutic display elements include one or more contrast edges moving in a substantially linear path (Col. 5, lines 25 – 49). The locus of movement of the visual display elements is periodically adjusted (Col. 5, line 62 – Col. 6, line 7). It is well established that a

recitation with respect to the manner in which an apparatus is intended to be employed, i.e., a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); *In re Ludtke*, 441 F.2d 664, 169 USPQ 566 (CCPA 1971).

In regards to claims 43, 45 - 47, 50, 58, 60, 61 and 63 - 65, Kasha, Jr. discloses a method of enhancing neurophysiological processes of a patient by the stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex, the method including the steps of generating an output from computer processing means (22) to cause a display on visual display means (10) for viewing by said patient said display including at least one visual cognitive exertion exercise (Col. 8, lines 53 – 55) and at least one visual stimulation image (18) including one or more therapeutic display elements (Col. 5, lines 18 – 20) targeted to stimulate selected ones of said receptive cell fields, said therapeutic display elements including one or more moving contrast edges, wherein said visual stimulation image provides therapeutic stimulation to selected ones of said

receptive cell fields whilst said patient is performing said visual cognitive exertion exercise. Kasha, Jr. discloses varying the display in response to feedback received from the patient (Col. 8, lines 58 – 60). Kasha, Jr. discloses providing a different display to each eye of the patient (Col. 5, lines 15 – 26). The display includes cortical stimulation elements (18) and non-cortical stimulation elements (16, 34). The locus of movement of therapeutic display elements is periodically adjusted (Col. 5, line 62 – Col. 6, line 7). Kasha, Jr. discloses varying at least one of spatial density, luminance, contrast, color, shape, velocity, orientation, direction of motion and locus of movement of said plurality of therapeutic display elements (Col. 5, line 62 – Col. 6, line 7). The therapeutic display elements include one or more contrast edges moving in a substantially linear path (Col. 5, lines 18 – 20).

Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). See MPEP 2112.02. In the present case, stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex is an inherent result of the moving edges, direction changes and velocity changes of the stimulation element as disclosed by Kasha, Jr. Furthermore, providing the stimulation image and cognitive exertion exercise as disclosed by Kasha, Jr. to a patient having visual dyslexia or ADHD would provide treatment to those disorders as a result of the need to concentrate and the exercise received by the eye muscles.

6. Claims 1 – 6, 9, 13, 17, 22, 25, 26, 28, 29, 31, 32, 43 – 46, 54, 57, 58 and 60 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 5,953,102 to Berry.

In regards to claims 1 – 6, 9, 13, 17, 22, 25, 26, 28, 29, 31 and 32, Berry discloses an apparatus (Figure 2) for the enhancement of neurophysiological processes of a patient by the stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex, the apparatus including first visual display means (Col. 5, lines 7 – 11) for viewing by said patient and computer processing means (70) producing an output to said visual display means to cause a display on said visual display means (Col. 7, lines 18 – 27), said display including at least one visual cognitive exertion exercise (Col. 7, lines 42 – 57) and at least one visual stimulation image including one or more therapeutic display elements targeted to stimulate selected ones of said receptive cell fields, said therapeutic display elements including one or more moving contrast edges (Col. 7, lines 36 – 39), wherein said therapeutic display elements are displayed on said visual display means so as to provide therapeutic stimulation to said receptive cell fields of a patient whilst said patient is performing said cognitive exertion exercise. Berry discloses a second visual display to be viewed by a therapist and a therapist input means allowing the therapist to vary the display (Col. 7, lines 20 – 27). The therapist inputs vary at least one of the spatial density, luminance, contrast, color, shape, velocity or locus of movement of the therapeutic display elements (Col. 7, line 60 – Col. 8, line 5). The apparatus includes feedback means providing an indication of the patient's performance (Col. 7, lines 25 – 27). The apparatus includes means (51) for controlling patient's position relative to the first display. Berry discloses patient input means (Col. 8, lines 9 – 12). The display includes cortical stimulation elements and non-cortical stimulation elements. The apparatus includes means for varying at least two of spatial density, luminance, contrast, color, shape, velocity, orientation, direction of motion and locus of movement of said plurality of therapeutic display elements (Col. 7, line 65 – Col. 8, line 5). The cognitive exertion exercise includes a series of prompts requiring a patient response. The therapeutic display elements include a plurality of parallel

stripes having a substantially linear component of movement (Col. 7, lines 36 – 39). It is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e., a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); *In re Ludtke*, 441 F.2d 664, 169 USPQ 566 (CCPA 1971).

In regards to claims 43 – 46, 54, 57, 58 and 60, Berry discloses a method of enhancing neurophysiological processes of a patient by the stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex, the method including the steps of generating an output from computer processing means (70) to cause a display (Col. 7, lines 18 – 27) on visual display means (Col. 5, lines 7 – 11) for viewing by said patient said display including at least one visual cognitive exertion exercise (Col. 7, lines 42 – 57) and at least one visual stimulation image including one or more therapeutic display elements (Col. 7, lines 36 – 39) targeted to stimulate selected ones of said receptive cell fields, said therapeutic display elements including one or more

moving contrast edges, wherein said visual stimulation image provides therapeutic stimulation to selected ones of said receptive cell fields whilst said patient is performing said visual cognitive exertion exercise. Berry discloses varying the display in response to input from a therapist (Col. 7, lines 20 – 27). The display includes cortical stimulation elements and non-cortical stimulation elements. The locus of movement of therapeutic display elements is periodically adjusted (Col. 5, lines 64 – 65). Berry discloses varying at least one of spatial density, luminance, contrast, color, shape, velocity, orientation, direction of motion and locus of movement of said plurality of therapeutic display elements (Col. 7, line 60 – Col. 8, line 5). The therapeutic display elements include plurality of parallel stripes having a substantially linear component of movement (Col. 7, lines 36 – 39). Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). See MPEP 2112.02. In the present case, stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex is an inherent result of the moving edges, changes in shape, contrast and velocity of the stimulation elements as disclosed by Berry.

7. Claims 1, 2, 5, 6, 10, 13, 17, 26, 30, 31, 35 – 37, 43, 58 and 62 – 65 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,364,845 to Duffy et al.

In regards to claims 1, 2, 5, 6, 10, 13, 17, 26, 30, 31 and 35 – 37, Duffy et al. discloses an apparatus (Figure 6A, 6B) for the enhancement of neurophysiological processes of a patient by the stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex, the apparatus including first visual display means for viewing by said patient and

computer processing means (Col. 17, lines 16 – 27) producing an output to said visual display means to cause a display on said visual display means, said display including at least one visual cognitive exertion exercise (Col. 11, lines 24 – 30) and at least one visual stimulation image (Col. 11, lines 19 – 23) including one or more therapeutic display elements targeted to stimulate selected ones of said receptive cell fields, said therapeutic display elements including one or more moving contrast edges, wherein said therapeutic display elements are displayed on said visual display means so as to provide therapeutic stimulation to said receptive cell fields of a patient whilst said patient is performing said cognitive exertion exercise. Duffy et al. discloses a second visual display (Col. 17, lines 61 – 63; Figure 6A) to be viewed by a therapist and a therapist input means allowing the therapist to vary the display. Duffy et al. discloses feedback means including input means allowing the patient to provide a response to the exertion exercise (Col. 11, line 66 – Col. 12, lines 4). The feedback means includes means for monitoring brain activity (Col. 12, lines 4 – 11). The apparatus includes means for controlling patient's position relative to the first display (Col. 17, lines 4 – 6). The processing means stores a plurality of visual cognitive exertion exercises. The display includes cortical stimulation elements and non-cortical stimulation elements. Duffy et al. discloses means for generating an auditory cognitive exertion exercise (Col. 17, lines 43 – 44). It is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e., a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior

art reference explicitly discusses such capacity for performing the recited function. *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); *In re Ludtke*, 441 F.2d 664, 169 USPQ 566 (CCPA 1971).

In regards to claims 43, 58 and 62 - 65, Duffy et al. discloses a method of enhancing neurophysiological processes of a patient by the stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex, the method including the steps of generating an output from computer processing means (Col. 17, lines 16 – 27) to cause a display on visual display means (Col. 16, lines 65 – 67) for viewing by said patient said display including at least one visual cognitive exertion exercise (Col. 11, lines 24 – 30) and at least one visual stimulation image (Col. 11, lines 19 – 23) including one or more therapeutic display elements targeted to stimulate selected ones of said receptive cell fields, said therapeutic display elements including one or more moving contrast edges, wherein said visual stimulation image provides therapeutic stimulation to selected ones of said receptive cell fields whilst said patient is performing said visual cognitive exertion exercise. The display includes cortical stimulation elements and non-cortical stimulation elements. Duffy et al. discloses providing an auditory cognitive exertion exercise (Col. 17, lines 43 – 44). Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently

perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). See MPEP 2112.02. In the present case, stimulation of receptive cell fields in the visual pathways of the patient between the retina and the visual cortex is an inherent result of the moving edges, direction changes and velocity changes of the stimulation element as disclosed by Duffy et al. Furthermore, providing the stimulation image and cognitive exertion exercise as disclosed by Duffy et al. to a patient having visual dyslexia or ADHD would provide treatment to those disorders as a result of the need to concentrate and the exercise received by the eye muscles.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7, 8 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,364,845 to Duffy et al. as applied to claims 6 and 36 above, and further in view of US Patent No. 6,213,956 to Lawton.

In regards to claims 7, 8 and 41, Duffy et al. discloses a patient input means allowing a patient to provide a push-button response to a cognitive exertion exercise (Col. 17, lines 49 – 52), but fails to disclose the response being auditory or hand written. However, Lawton discloses a patient input means allowing a patient to provide a push-button, auditory or hand written response to a cognitive exertion exercise (Col. 5, lines 33 – 35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the input means as disclosed by Duffy et al. to allow a patient to provide an auditory or hand written response as taught by

Lawton in that Lawton teaches a push-button, auditory or hand written response to be functionally equivalent (Col. 5, lines 33 – 35) and therefore interchangeable.

***Allowable Subject Matter***

10. Claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
11. Claims 14, 19 – 21, 23, 24, 27, 33, 34, 39, 40, 48, 49, 51 - 53, 55, 56 and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 5,344,324 to O'Donnell et al. and US Patent No. 5,565,949 to Kasha, Jr. disclose display mans including at least one visual cognitive exertion exercise and at least one visual stimulation image including one or more therapeutic display elements including one or more moving contrast edges.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMLF

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